

104TH CONGRESS
1ST SESSION

H. R. 665

To control crime by mandatory victim restitution.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1995

Mr. McCOLLUM introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To control crime by mandatory victim restitution.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Victim Restitution Act
5 of 1995”.

6 **SEC. 2. MANDATORY RESTITUTION AND OTHER PROVI-**
7 **SIONS.**

8 (a) ORDER OF RESTITUTION.—Section 3663 of title
9 18, United States Code, is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (1)—

1 (i) by striking “may order, in addition
2 to or, in the case of a misdemeanor, in lieu
3 of any other penalty authorized by law”
4 and inserting “shall order”; and

5 (ii) by adding at the end the follow-
6 ing: “The requirement of this paragraph
7 does not affect the power of the court to
8 impose any other penalty authorized by
9 law. In the case of a misdemeanor, the
10 court may impose restitution in lieu of any
11 other penalty authorized by law.”;

12 (B) by adding at the end the following:

13 “(4) In addition to ordering restitution of the victim
14 of the offense of which a defendant is convicted, a court
15 may order restitution of any person who, as shown by a
16 preponderance of evidence, was harmed physically, emo-
17 tionally, or pecuniarily, by unlawful conduct of the defend-
18 ant during—

19 “(A) the criminal episode during which the of-
20 fense occurred; or

21 “(B) the course of a scheme, conspiracy, or pat-
22 tern of unlawful activity related to the offense.”;

23 (2) in subsection (b)(1)(B) by striking “imprac-
24 tical” and inserting “impracticable”;

1 (3) in subsection (b)(2) by inserting “emotional
2 or” after “resulting in”;

3 (4) in subsection (b)—

4 (A) by striking “and” at the end of para-
5 graph (4);

6 (B) by redesignating paragraph (5) as
7 paragraph (6); and

8 (C) by inserting after paragraph (4) the
9 following new paragraph:

10 “(5) in any case, reimburse the victim for nec-
11 essary child care, transportation, and other expenses
12 related to participation in the investigation or pros-
13 ecution of the offense or attendance at proceedings
14 related to the offense; and”;

15 (5) in subsection (c) by striking “If the court
16 decides to order restitution under this section, the”
17 and inserting “The”;

18 (6) by striking subsections (d), (e), (f), (g), and
19 (h);

20 (7) by redesignating subsection (i) as subsection
21 (m); and

22 (8) by inserting after subsection (c) the follow-
23 ing:

1 “(d)(1) The court shall order restitution to a victim
2 in the full amount of the victim’s losses as determined by
3 the court and without consideration of—

4 “(A) the economic circumstances of the of-
5 fender; or

6 “(B) the fact that a victim has received or is
7 entitled to receive compensation with respect to a
8 loss from insurance or any other source.

9 “(2) Upon determination of the amount of restitution
10 owed to each victim, the court shall specify in the restitu-
11 tion order the manner in which and the schedule according
12 to which the restitution is to be paid, in consideration of—

13 “(A) the financial resources and other assets of
14 the offender;

15 “(B) projected earnings and other income of
16 the offender; and

17 “(C) any financial obligations of the offender,
18 including obligations to dependents.

19 “(3) A restitution order may direct the offender to
20 make a single, lump-sum payment, partial payment at
21 specified intervals, or such in-kind payments as may be
22 agreeable to the victim and the offender.

23 “(4) An in-kind payment described in paragraph (3)
24 may be in the form of—

25 “(A) return of property;

1 “(B) replacement of property; or

2 “(C) services rendered to the victim or to a per-
3 son or organization other than the victim.

4 “(e) When the court finds that more than 1 offender
5 has contributed to the loss of a victim, the court may make
6 each offender liable for payment of the full amount of res-
7 titution or may apportion liability among the offenders to
8 reflect the level of contribution and economic cir-
9 cumstances of each offender.

10 “(f) When the court finds that more than 1 victim
11 has sustained a loss requiring restitution by an offender,
12 the court shall order full restitution of each victim but may
13 provide for different payment schedules to reflect the eco-
14 nomic circumstances of each victim.

15 “(g)(1) If the victim has received or is entitled to re-
16 ceive compensation with respect to a loss from insurance
17 or any other source, the court shall order that restitution
18 be paid to the person who provided or is obligated to pro-
19 vide the compensation, but the restitution order shall pro-
20 vide that all restitution of victims required by the order
21 be paid to the victims before any restitution is paid to
22 such a provider of compensation.

23 “(2) The issuance of a restitution order shall not af-
24 fect the entitlement of a victim to receive compensation
25 with respect to a loss from insurance or any other source

1 until the payments actually received by the victim under
2 the restitution order fully compensate the victim for the
3 loss, at which time a person that has provided compensa-
4 tion to the victim shall be entitled to receive any payments
5 remaining to be paid under the restitution order.

6 “(3) Any amount paid to a victim under an order of
7 restitution shall be set off against any amount later recov-
8 ered as compensatory damages by the victim in—

9 “(A) any Federal civil proceeding; and

10 “(B) any State civil proceeding, to the extent
11 provided by the law of the State.

12 “(h) A restitution order shall provide that—

13 “(1) all fines, penalties, costs, restitution pay-
14 ments and other forms of transfers of money or
15 property made pursuant to the sentence of the court
16 shall be made by the offender to an entity des-
17 ignated by the Director of the Administrative Office
18 of the United States Courts for accounting and pay-
19 ment by the entity in accordance with this sub-
20 section;

21 “(2) the entity designated by the Director of
22 the Administrative Office of the United States
23 Courts shall—

24 “(A) log all transfers in a manner that
25 tracks the offender’s obligations and the cur-

1 rent status in meeting those obligations, unless,
2 after efforts have been made to enforce the res-
3 titution order and it appears that compliance
4 cannot be obtained, the court determines that
5 continued recordkeeping under this subpara-
6 graph would not be useful; and

7 “(B) notify the court and the interested
8 parties when an offender is 30 days in arrears
9 in meeting those obligations; and

10 “(3) the offender shall advise the entity des-
11 ignated by the Director of the Administrative Office
12 of the United States Courts of any change in the of-
13 fender’s address during the term of the restitution
14 order.

15 “(i) A restitution order shall constitute a lien against
16 all property of the offender and may be recorded in any
17 Federal or State office for the recording of liens against
18 real or personal property.

19 “(j) Compliance with the schedule of payment and
20 other terms of a restitution order shall be a condition of
21 any probation, parole, or other form of release of an of-
22 fender. If a defendant fails to comply with a restitution
23 order, the court may revoke probation or a term of super-
24 vised release, modify the term or conditions of probation
25 or a term of supervised release, hold the defendant in con-

1 tempt of court, enter a restraining order or injunction,
2 order the sale of property of the defendant, accept a per-
3 formance bond, or take any other action necessary to ob-
4 tain compliance with the restitution order. In determining
5 what action to take, the court shall consider the defend-
6 ant's employment status, earning ability, financial re-
7 sources, the willfulness in failing to comply with the res-
8 titution order, and any other circumstances that may have
9 a bearing on the defendant's ability to comply with the
10 restitution order.

11 “(k) An order of restitution may be enforced—

12 “(1) by the United States—

13 “(A) in the manner provided for the collec-
14 tion and payment of fines in subchapter B of
15 chapter 229 of this title; or

16 “(B) in the same manner as a judgment in
17 a civil action; and

18 “(2) by a victim named in the order to receive
19 the restitution, in the same manner as a judgment
20 in a civil action.

21 “(l) A victim or the offender may petition the court
22 at any time to modify a restitution order as appropriate
23 in view of a change in the economic circumstances of the
24 offender.”.

1 (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-
2 TION.—Section 3664 of title 18, United States Code, is
3 amended—

4 (1) by striking subsection (a);

5 (2) by redesignating subsections (b), (c), (d),
6 and (e) as subsections (a), (b), (c), and (d);

7 (3) by amending subsection (a), as redesignated
8 by paragraph (2), to read as follows:

9 “(a) The court may order the probation service of the
10 court to obtain information pertaining to the amount of
11 loss sustained by any victim as a result of the offense,
12 the financial resources of the defendant, the financial
13 needs and earning ability of the defendant and the defend-
14 ant’s dependents, and such other factors as the court
15 deems appropriate. The probation service of the court
16 shall include the information collected in the report of
17 presentence investigation or in a separate report, as the
18 court directs.”; and

19 (4) by adding at the end thereof the following
20 new subsection:

21 “(e) The court may refer any issue arising in connec-
22 tion with a proposed order of restitution to a magistrate
23 or special master for proposed findings of fact and rec-

1 ommendations as to disposition, subject to a de novo de-
2 termination of the issue by the court.”.

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